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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,423	02/17/2002	Thomas Bertelshofer	BERTELSHOFER	3218
20151	7590	02/10/2004	EXAMINER	
HENRY M FEIEREISEN, LLC 350 FIFTH AVENUE SUITE 4714 NEW YORK, NY 10118			JOHNSON, VICKY A	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/069,423

Applicant(s)

BERTELSHOFFER ET AL.

Examiner

Vicky A. Johnson

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-35 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17, 19-30, 32-35 and 38-40 is/are rejected.
- 7) ☒ Claim(s) 14 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings were received on November 17, 2003. These drawings are approved.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 5-8, 15, 17, 19, 20, 22-25, 32, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid (US 5,702,314).

Schmid discloses a tensioner comprising: housing (2), a recess (see Fig), a bearing receptacle (6), an axle (7), a swivel arm (9), a torsion spring (13), a friction disk (10), a plastic, tubular insert (20) that exceeds the inner diameter of the torsion spring (col. 4 lines 1-3) and is at a mid-section of the torsion spring (see Fig), and a circular ring shaped space (12) defined by the bearing receptacle and the torsion spring (see Fig).

Schmid discloses a tensioner as described above, but does not disclose the insert made of PU foam.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the insert of Schmid out of PU foam, since it has been held

to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

4. Claims 3, 4, 16, 21, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid (US 5,702,314) in view of Ayukawa (US 5,803,849).

Schmid discloses the tensioner as described above, but does not disclose an insert placed in the space which is defined by the torsion spring and an inner wall of the housing.

Ayukawa discloses a tensioner having an insert (32) placed in the space of a ring groove (see Fig 3), which is defined by the torsion spring and an inner wall of the housing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an insert as taught by Ayukawa in order to reduce noise (col. 2 lines 15-21).

5. Claims 9-13, 26-30, 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid (US 5,702,314) in view of Ito et al (JP-1320367).

Schmid discloses the tensioner as described above, but does not disclose an insert which when viewed in half section had a U-shaped profile with walls substantially parallel, the walls having different lengths, and that the shorter wall against the outer wall of the bearing receptacle.

Ito et al show an insert which when viewed in half section had a U-shaped profile with walls substantially parallel (see Fig 4), the walls having different lengths (see Fig 4), and that the shorter wall against the outer wall of the bearing receptacle (see Fig 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tensioner of Schmid by replacing the insert with the insert as taught by Ito et al in order to absorb impact and vibration (abstract).

Re claims 38 and 40, Ito et al shows an insert which has one part which bears against the spring and one part which bears against the housing (see Figs 4 and 5).

***Allowable Subject Matter***

6. Claims 14 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Some further comments regarding the applicant's remarks are deemed appropriate.

The applicant argues that the insert of Schmid does not fill or bridge the radial space between the housing and the tension spring. It is agreed, but there is no limitation in claim 1 or claim 19, which requires the insert fill or bridge the radial space between the housing and the tension spring. Therefore the Schmid reference meets the limitations of the claims.

The applicant's remarks have been accorded due consideration, however, they are not deemed fully persuasive.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (703) 305-3013. The examiner can normally be reached on Monday-Thursday (7:00a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (703) 308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you


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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

vaj  
2/9/09

  
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2/9/09